U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28787841

Date: FEB. 27, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that

petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner states he is an expert in the field of safety and risk management. Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F .R. § 204.5(h)(3)(i) (x). The Petitioner initially claimed to have satisfied five of these criteria, summarized below[1]:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance in the field of endeavor;
- (vi), Authorship of scholarly articles in professional or major trade publications or other major media; and
- (viii), Performed in a leading or critical role for distinguished organizations.

The Director concluded that the Petitioner did not establish that he has received a major, internationally recognized prize or award under 8 C.F.R. § 204.5(h)(3) and that he only met the criterion for authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner challenges the Director's findings regarding his participation as a judge of the work of others, original contributions of major significance in the field of endeavor, and leading or critical role for distinguished organizations. The Petitioner does not contest the Director's determination relating to receiving a major, internationally recognized prize or award and membership in associations that require outstanding achievements. Therefore, we consider the Petitioner to have waived these issues.[2]

After reviewing all of the evidence in the record, we agree that he has not met the initial evidentiary requirements for classification as an individual of extraordinary ability.

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[1] As the Petitioner does not and has not claimed to meet any of the remaining criteria not listed, we will not address them here.

[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived); *see also Sepulveda v. US. Att'y Gen.*, 401 F .3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

To meet this criterion, a petitioner must show that they have not only been invited to judge the work of others, but that they have participated in judging the work of others in the same or allied field of specialization. The Petitioner submitted evidence that he was invited as an acceptance review expert for three national railway projects to evaluate the reports and render approvals for the proposed projects. While the Director concluded that the documentation did not demonstrate that the Petitioner's role as a judge involved evaluating the specific work of others in his field or an allied field, we disagree and conclude that the submitted evidence is sufficient to satisfy this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), we determine not only whether the person has made original contributions, but also whether they are of major significance in the field.[3] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[4]

The Director concluded that the Petitioner demonstrated that his contributions are original, but not of major significance to the field. The Director explained that although the Petitioner provided a printout from the China National Knowledge Infrastructure which shows that the Petitioner's seven journal publications were cited 54 times since 2002, he did not submit evidence to demonstrate that this number of citations is indicative of major significance to the field. The Petitioner does not address this particular issue on appeal but instead repeats that he has "been cited by other scholars in their research and implemented in the transportation safety and risk management systems in the field." Without more, the Petitioner has not shown that his citations for his publications are commensurate with contributions of major significance.

The Petitioner also focuses on the national government-funded projects in which he incorporated his transportation safety and risk management theorems and systems and the letters of recommendation from individuals in the field. While the Petitioner has shown the original research he performed on the national projects has had some impact in the field, he has not established the level of significance in the field required by this criterion. The Petitioner has not sufficiently shown wide acceptance or implementation of his research findings or that experts in the field have relied on his research findings in their own studies or deemed his studies as crucial in their own projects.

In addition, while the Petitioner provided letters of recommendation from individuals that discuss his contributions to the field, including his work on the national government-funded projects, they do not

[3] *See generally 6 USCIS Policy Manual* F.2(B)(l), https://www.uscis.gov/policymanual.
[4] *Id.*

demonstrate how his contributions are "of major significance in the field." The letters restate the Petitioner's claims and lack specific information about the impact of the contribution on the field. For example, the letter from M-R- states that the Petitioner developed a theory for the safety assessment and safety approval for the operation of the [redacted] and that the application "ended up with good results, solved a large number of safety problems or hidden risks, and played a vital role in ensuring the system safety and safe operation of [the] [redacted] M-R- further states that due to the successful application of his theory on the [redacted] the Petitioner was invited by the [redacted] to provide support for the safety approval of their maglev project.

The letter from B-W- states that the Petitioner "initiated the "Risk Research System of Liability Insurance in Safe Production Based on International Standards" in China's insurance industry." B-W- also states that the "Research Guide compiled by [the Petitioner] in accordance with the "Risk Research System of Liability Insurance in Safe Production Based on International Standards" has become the research basis and unified guidance of the three subprojects," building construction, hazardous chemical, and coal mine, and that it "has been further applied, which has generated important social and economic value in providing risk assessment and accident prevention services of liability insurance in safe production for the insurance industry, screening hidden accident dangers for insured enterprises, and improving the level of work safety management."

However, the letters do not provide sufficient specific information to demonstrate that the Petitioner's contributions are of major significance to the field. For example, the letters do not establish that the Petitioner's contributions have resulted in a substantial effect in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[5]

Without more specific information and evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

To meet this criterion, a petitioner must first establish that they have performed in either a leading or critical role for an organization, establishment, or one of its divisions or departments. A petitioner must then establish that the organization or establishment (or the department or division) for which they hold or held a qualifying role has a distinguished reputation.[6]

The Petitioner claimed to satisfy this criterion through his position as deputy manager of the Safety and Quality Department and Safety Assessment Center (SQDSAC) at [redacted]

[5] *Id.*
[6] *Id.*

The record establishes that the Petitioner has held a leading role for the SQDSAC at [redacted] The next question is whether SQDSAC has a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[7]

On appeal, the Petitioner contends that:

> [redacted] in China at the time, and assuming the country's important maglev science project to develop the technology, [redacted] indeed enjoyed a distinguished reputation as there were no other entities in the field and it had successfully completed the [redacted] (the [redacted] in the country.

In addition, the Petitioner submits a document entitled "Special Report on Safety Evaluation of Commercial Operation System of [redacted] which was previously submitted in response to the Director's request for evidence.

While we acknowledge that the company was the [redacted] in China and that it completed a national project, [redacted] does not necessarily establish its distinguished reputation. More importantly, the Petitioner does not provide sufficient supporting documentation to establish that SQDSAC, the division or department in which he held a leading role, has a distinguished reputation, as required under this criterion. The Petitioner did not include evidence, for example, showing the field's view of the SQDSAC or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion. Accordingly, the Petitioner has not demonstrated that he fulfills this criterion.

III. CONCLUSION

Because the Petitioner has not established that he meets at least three of the ten criteria, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

[7] *See* https://www.merriam-webster.com/dictionary/distinguished, cited in 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.